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MEMO ENDORSED

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Hon. James C. Francis IV
United States Magistrate Judge
500 Pearl Street, Room 1960
New York, NY 10007-1212

June 4, 2007
USDC SDNY
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LEAD CASE
04CIV7922

(212) 805-7930

Re: Banno v. City of New York, et al.
06 CV 2270 (KMK)

Dear Judge Francis:

Rechtschaffen v. City,
05 Civ. 9930 (KMK)

File
in
both

I am writing to request an order to compel a defendant and another employee of the defendant City to appear at depositions and to compel full responses to plaintiff's discovery requests.

On March 20, I wrote to the Court requesting this essential relief. At that time, Mr. Mirro provided dates for the depositions in question (and several others) and submitted them to the Court to be so ordered outside the May 1 discovery end date. He also promised to provide additional discovery material as I had repeatedly requested, and, on that basis, I withdrew my request for an order.

On the day before one of the depositions, Mr. Mirro cancelled the deposition merely advising that the witness, Det. Cummings, was unavailable. Then, the day before the next deposition, I was advised that defendant John Doe, Badge No. 6216, would not appear. Counsel claimed that there were issues involving the scope of the deposition of under cover officers in another case, the outcome of which might affect the questioning in this case.

These events were disturbing since I had been trying to schedule depositions since early January. I had advised Mr. Mirro that I was relocating on to Virginia on May 1 (the discovery cut-off date) and wanted to conduct these depositions before that date. He refused to provide dates prior to May 1 and I was forced to alter my plans to accommodate his schedule. Nonetheless, two of those depositions were cancelled on short notice, not allowing sufficient time to seek the assistance of the Court prior to my move.

I have consulted with the other counsel interested in deposing these officers and have provided several dates in July to Mr. Mirro for those depositions. I have yet to hear from him.

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I have just reviewed his letter of May 31 to the Court with a deposition schedule. That schedule has me listed for July 19 and September 11. I am assuming that the latter date is being proposed for the deposition of defendant John Doe. Both of the witnesses in question, Det. Cummings and John Doe, may have information that will lead to additional defendants or additional causes of action. Since one of the statute of limitations will expire on August 29, 2007, a September date is not acceptable.

In addition, defendants have still failed to provide complete and proper responses to plaintiff's discovery requests. I provided a detailed memo on March 6 of those deficiencies, a copy of which was provided to the Court in my application of March 20, 2007. The following items are still outstanding:

1. Defendants have refused to provide a privilege log of the numerous redactions in their document production;
2. Defendants have refused to provide the source (name or otherwise) of certain handwritten notes;
3. Defendants have refused to provide a legible copy of those notes or to produce the originals for inspection and copying;
4. Defendants produced a fax cover page but not the fax itself and they have refused to provide that fax;
5. Defendants have refused to provide the disciplinary and civilian complaint history for each of the defendants.

just In light of the above, *VC 6216* I request that the Court order that the deposition of Detective Cummings be conducted on July 17, 2007 and that of John Doe on July 19, 2007. Since the defendants violated (and failed to seek relief from) this Court's previous order with respect to these depositions, I request that defendants be responsible for the costs of the depositions and for the cost of my return trip to New York.

I also request an Order requiring the defendants to provide the information set forth in Nos. 1-5 above, at least two weeks before the scheduled depositions.

The depositions shall proceed on the dates indicated above. The deponents shall be available for the presumptive 7 hours. *6/20/07* Respectfully submitted,
Jeffrey E. Fogel

cc: James Mirro, Esq. (By Fax: (212) 788-9776)
Rachel M. Kleinman, Esq.
Jason J. Rozger, Esq.

Mr. Mirro has adequately addressed the document issues in his June 4, 2007 letter.

SO ORDERED.
James C. Francis IV
USMJ